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8 Attorneys for Secured Creditor BANK OF AMERICA, NATIONAL ASSOCIATION AS
9 SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL
ASSOCIATION, AS TRUSTEE FOR CERTIFICATEHOLDERS OF BEAR
10 STEARNS ASSET BACKED SECURITIES I LLC, ASSET BACKED-
CERTIFICATES, SERIES 2005-HE11

11 UNITED STATES BANKRUPTCY COURT
12 DISTRICT OF NEVADA

13
14 In re
15 JOSE GUADALUPE LUNA AND GLORIA
ALICIA LUNA,
16 Debtor(s).

Bankruptcy Case No. BK-S-09-13469-BAM
Chapter 13

BANK OF AMERICA, NATIONAL
ASSOCIATION AS SUCCESSOR BY
MERGER TO LASALLE BANK
NATIONAL ASSOCIATION, AS
TRUSTEE FOR CERTIFICATEHOLDERS
OF BEAR STEARNS ASSET BACKED
SECURITIES I LLC, ASSET BACKED-
CERTIFICATES, SERIES 2005-HE11'S
MOTION FOR RELIEF FROM
AUTOMATIC STAY
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

Date: August 18, 2009
Time: 1:30 p.m.

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23 TO THE RESPONDENTS NAMED ABOVE:

24 Bank of America, National Association as successor by merger to LaSalle Bank National
25 Association, as Trustee for Certificate holders of Bear Stearns Asset Backed Securities I LLC, Asset
26 Backed-Certificates, Series 2005-HE11 ("Movant"), respectfully represents as follows:

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RELIEF FROM STAY - CAUSE

FAILURE TO MAKE POST-PETITION PAYMENTS

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3 1. This court has jurisdiction over the subject matter of this Motion pursuant to the
4 provisions of 28 United States Code §§ 157, 1334, and 11 United States Code § 362.

5 2. On or about March 12, 2009, Gloria Alicia Luna ("Borrower") and Jose Guadalupe
6 Luna (collectively, the "Debtors") filed a voluntary petition under Chapter 13 of the Bankruptcy
7 Code. Kathleen A. Leavitt is the appointed Chapter 13 Trustee.

8 3. On or about July 19, 2005, Borrower, for valuable consideration, made, executed and
9 delivered to Stonecreek Funding Corp. ("Lender") a Note in the principal sum of \$166,400.00 (the
10 "Note"). Pursuant to the Note, Borrower is obligated to make monthly principal and interest
11 payments commencing September 1, 2005, and continuing until August 1, 2035, when all
12 outstanding amounts are due and payable. A true and correct copy of the Note is attached hereto as
13 exhibit B and incorporated herein by reference.

14 4. Subsequently, Lender indorsed the Note in blank, thereby converting the Note to a
15 bearer instrument. As Movant is currently in rightful possession of the indorsed in blank Note,
16 Movant qualifies as the Note holder with standing to prosecute the instant Motion.

17 5. On or about July 19, 2005, Borrower made, executed and delivered to Lender a Deed
18 of Trust (the "Deed of Trust") granting Lender a security interest in the certain real property located
19 at 4224 Harris Avenue, Las Vegas, Nevada 89110 (hereinafter "Real Property"), which is more fully
20 described in the Deed of Trust. The Deed of Trust provides that attorneys' fees and costs incurred as
21 a result of the Debtors' bankruptcy case may be included in the outstanding balance under the Note.
22 The Deed of Trust was recorded on July 29, 2005, in the Official Records of Clark County, State of
23 Nevada. A true and correct copy of the Deed of Trust is attached hereto as exhibit C and
24 incorporated herein by reference.

25 6. Subsequently, Lender's beneficial interest in the Note and Deed of Trust was sold,
26 assigned and transferred to Movant. A true and correct copy of the Corporation Assignment of Deed
27 of Trust evidencing the Assignment of the Note and Deed of Trust to Movant is attached hereto as
28 exhibit D and incorporated herein by reference.

1 7. The Debtors are in default of their obligations under the Note for failure to make
2 payments as of October 1, 2008. As of June 11, 2009, the total amount owing under the Note is the
3 approximate sum of \$181,523.72, representing the principal balance of \$166,298.70, interest in the
4 sum of \$12,315.20, late charges in the amount of \$468.57, accumulative NSF charges in the amount
5 of \$25.00, escrow advances in the amount of \$962.07, other fees in the amount of \$5.00, and
6 recoverable balance in the amount of \$1,449.18. Further, Movant has incurred additional
7 post-petition attorneys' fees and costs in bringing the instant Motion. This is an approximate amount
8 for purposes of this Motion only, and should not be relied upon as such to pay off the subject loan as
9 interest and additional advances may come due subsequent to the filing of the Motion. An exact
10 payoff amount can be obtained by contacting Movant's counsel. Movant's Information Sheet as to
11 the extent of liens and encumbrances against the Real Property is attached hereto as exhibit A and
12 incorporated herein by reference.

13 8. Pursuant to 11 United States Code § 1322, and the Debtors' Chapter 13 Plan, the
14 Debtors are obligated to make all post-petition payments owing on the Note directly to Movant.
15 However, Movant has not received the post-petition payments owing for April 1, 2009 through and
16 including June 1, 2009. Accordingly, the post-petition arrears owing under the Note are in the
17 approximate sum of \$4,603.40, consisting of two (2) post-petition payments in the amount of
18 \$1,369.57 each, one (1) post-petition payment in the amount of \$1,658.82, and three (3) late charges
19 in the amount of \$68.48 each, excluding the post-petition attorneys' fees and costs incurred in filing
20 the instant Motion.

21 9. A debtor's failure to make post-petition mortgage payments as they become due in a
22 Chapter 13 case constitutes "cause" for relief from the automatic stay pursuant to 11 United States
23 Code § 362(d)(1). In re Ellis, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). Accordingly, as the Debtors
24 have failed to make post-petition payments under the Note, Movant is entitled to relief from the
25 automatic stay pursuant to 11 United States Code § 362(d)(1).

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RELIEF FROM STAY**LACK OF EQUITY**

10. Movant is informed and believes that, based on the Debtors' bankruptcy Schedules, the fair market value of the Real Property is no more than \$159,500.00. True and correct copies of Debtors' bankruptcy Schedules A and D are collectively attached hereto as exhibit E and incorporated herein by reference.

11. Based on the above, under the best case scenario, Movant is informed and believes that the equity in the Real Property is as follows:

Fair Market Value:	\$159,500.00
Less:	
Movant's Trust Deed	\$181,523.72
Costs of Sale (8%)	<u>\$12,760.00</u>
Equity in the Property:	\$<34,783.72>

As a result, there is no equity in the Real Property to be realized by the Debtors or the bankruptcy estate. Further, as the Debtors are unable to service the debt on the Real Property, Movant contends that the Real Property is not necessary for an effective reorganization. Therefore, Movant is entitled to relief from stay under 11 United States Code § 362(d)(2).

12. If Movant is not allowed to regain possession of and to foreclose on the Real Property it will suffer irreparable injury, loss and damage.

RELIEF FROM STAY - CAUSE**ADEQUATE PROTECTION**

13. Pursuant to the provisions of 11 United States Code §§ 361 and 362(d), Movant is entitled to adequate protection of its interest in the Real Property.

14. Movant submits the adequate protection in this case requires normal and periodic cash payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

15. Movant is informed and believes that Debtors are presently unwilling or unable to provide adequate protection to the Movant and there is no probability that adequate protection can be afforded to Movant within a reasonable time.

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1 16. By reason of the foregoing, Movant is entitled to relief from stay under 11 United
2 States Code § 362(d)(1), based upon the failure of Debtors to provide adequate protection to Movant
3 and to make payments as required by 11 United States Code § 1322.

4 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

5 1. Terminating the automatic stay of 11 United States Code § 362, as it applies to the
6 enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of Trust;

7 2. That the 10-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

8 3. Granting Movant leave to foreclose on the Real Property and to enforce the security
9 interest under the Note and the Deed of Trust, including any action necessary to obtain possession of
10 the Property;

11 4. Permitting Movant to offer and provide Debtors with information re: a potential
12 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
13 Mitigation Agreement, and to enter into such agreement with Debtors;

14 5. Alternatively, in the event this court declines to grant Movant the relief requested
15 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to
16 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
17 and all other deeds of trust encumbering the Real Property, including Debtors' obligations to pay
18 when due (a) the monthly installments of principal and interest, as required under the Note;
19 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors in order to
20 protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the
21 filing of this motion;

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1 6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion be
2 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law;

3 7. That the requirements of Local Rule 9021 be waived; and

4 8. For such other and further relief as the court deems just and proper.

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6 Dated: June 24, 2009

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ASSET BACKED-CERTIFICATES,
SERIES 2005-HE11